



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0055]

#### Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflators

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice.

**SUMMARY:** In order to prioritize, organize, and phase multiple recalls to remedy defective Takata frontal air bag inflators, the National Highway Traffic Safety Administration (“NHTSA”) is opening proceedings, including a public docket..NHTSA is considering issuing one or more administrative orders that would coordinate remedy programs associated with defective Takata air bag inflators. Coordination of the remedy programs may include, among other things, “acceleration,” prioritization, organization, and/or phasing of some or all such air bag inflator remedy programs. It may further include coordination as to air bag inflator sourcing, production, allocation, delivery, installation, and adequacy of the remedy. This notice explains events leading to today’s action and NHTSA’s authority to open such a proceeding. It also describes some of the issues that the agency anticipates considering in the proceeding and information the agency requests from commenters as part of such a proceeding.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202-366-9324.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, Scott Yon, Office of Defects Investigation, National Highway Traffic Safety Administration (telephone: 202-366-0139); for legal issues, Arija Flowers, Office of the Chief Counsel, NCC-111, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington DC, 20590 (telephone: 202-366-8714). Information regarding NHTSA’s investigation into Takata Air Bag Inflator ruptures is available on NHTSA’s website at: <http://www.safercar.gov/rs/takata/index.html>.

**SUPPLEMENTARY INFORMATION:** To mitigate and control the risk of serious injury or death due to an air bag inflator rupture, and to ensure that all affected vehicles in the United States are equipped with safe air bags as quickly as possible, NHTSA is considering exercising its authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (the “Safety Act”), 49 U.S.C. 30101, *et seq.*, to provide national-level leadership and

to facilitate the prioritization, organization, and phasing of the remedy programs of TK Holdings, Inc. (“Takata”) and all vehicle manufacturers having recalled, defective Takata frontal air bag inflators. This includes the remedy programs of BMW of North America, LLC (“BMW”), Chrysler Group, LLC (“Chrysler”), Ford Motor Company (“Ford”), General Motors, LLC (“GM”), American Honda Motor Company (“Honda”), Mazda North American Operations (“Mazda”), Mercedes-Benz, LLC – DBA Sprinter (“M-B Sprinter”) (as to Sprinter Vans only), Mitsubishi Motors North America, Inc. (“Mitsubishi”), Nissan North America, Inc. (“Nissan”), Subaru of America, Inc. (“Subaru”), and Toyota Motor Engineering and Manufacturing (“Toyota”) (collectively, the “Manufacturers”).

#### **I. The Reasons for a Coordinated Remedy**

The number of recalled air bag inflators and impacted vehicles and manufacturers, in combination with the supply issues related to these air bag recalls, presents an unprecedented level of complexity to the recall and remedy process. As of the date of this Federal Register Notice, these recalls of defective Takata air bag inflators constitute the largest Safety Act recall in NHTSA’s history, and one of the largest consumer product recalls in United States history, with approximately 34 million air bag inflators currently requiring replacement. The risk of harm presented by the defective Takata air bag inflators transcends the scope of the usual Safety Act recall. Accordingly, NHTSA is hereby opening a coordinated remedy program proceeding.

Each of the Manufacturers, with the exception of M-B Sprinter, has previously elected a remedy program of repair for at least some of their affected vehicles (specifically, for vehicles that were covered by prior Manufacturer recalls). *See* 49 U.S.C. 30120(a)(1)(A). These remedy programs are individual to each of the Manufacturers, creating a patch-work solution that NHTSA believes may not adequately address the safety risks presented by the defective Takata

air bag inflators within a reasonable time. Based on the currently available data, these recalls involve varying levels of risk of harm which must be mitigated and controlled: the risk of the air bag inflator rupturing when the air bag is inflated, which may result in serious injury or death to vehicle occupants without prior warning.

Specifically, NHTSA is issuing this notice pursuant to its authority under the Safety Act to “accelerate” remedy programs, 49 U.S.C. 30120(c)(3) and 49 CFR 573.14, to inspect and investigate, 49 U.S.C. 30166(b)(1), to ensure that defective vehicles and equipment are recalled and remedied, 49 U.S.C. 30118 through 30120, and to ensure that the remedy for the defect is adequate, 49 U.S.C. 30120, as delegated by the Secretary of Transportation (“the Secretary”), 49 CFR 1.95 and 501.2(a)(1). Given the severity of the possible harm, variable nature of the risk of harm to be mitigated and controlled, unprecedented number of vehicles and entities affected, and imperative for public confidence in the safety of their vehicle air bags, NHTSA is therefore opening a public proceeding, including a public docket, to investigate challenges and solutions related to the Takata air bag inflator recalls and to gather public comments on those issues.

NHTSA also anticipates collaborating in this proceeding with other Tier One inflator suppliers, which may include ARC Automotive, Inc. (“ARC”), Autoliv Americas (“Autoliv”), Key Safety Systems (“Key Safety”), Toyoda Gosei North America Corporation (“Toyoda”), TRW Automotive (“TRW”), and Special Devices, Inc./Daicel Group (“Daicel”) (collectively, the “Suppliers”) to craft solutions that further mitigate and control the risk of harm by ensuring safe air bags in every motor vehicle in the United States.

## **II. Background on Defective Takata Frontal Air Bag Inflators**

The first recall involving a rupturing Takata driver side frontal air bag inflator was initiated by Honda on November 11, 2008, and was designated by NHTSA as Recall No. 08V-

593. At that time, the defect was thought to be the result of a specific manufacturing issue involving one of the propellant presses at Takata's Moses Lake, Washington plant. Due to various discrepancies in Takata's recordkeeping for the affected parts, Honda had to expand the scope of the recall several times between 2009 and 2011. Those recall expansions were designated by NHTSA as Recall Nos. 09V-259, 10V-041, and 11V-260.

The first recall involving a rupturing Takata passenger side frontal air bag inflator was initiated by Takata on April 11, 2013, and involved the following vehicle manufacturers: BMW, Honda, Mazda, Nissan, and Toyota. The various recall submissions were designated by NHTSA as Recall Nos. 13E-017, 13V-130, 13V-132, 13V-133, 13V-136, and 13V-172. At that time, the defect was thought to be the result of two specific manufacturing issues - (1) the possibility that the auto-reject function on the propellant press had been manually disabled, and (2) the possibility that certain propellant lots were exposed to uncontrolled moisture conditions at Takata's Monclova, Mexico plant.

Between August 2013 and April 2014, NHTSA received three Vehicle Owner Questionnaires (VOQs) that alleged air bag inflator ruptures in vehicle populations outside the scope of the prior driver side and passenger side frontal air bag recalls. In late-May 2014, Takata confirmed the three ruptures with NHTSA's Office of Defects Investigation (ODI), and notified ODI of an additional three ruptures (for a total of six rupture incidents between August 2013 and May 2014). On June 10, 2014, NHTSA convened a conference call, after which Takata and the affected vehicle manufacturers agreed to initiate regional parts collection campaigns in Florida, Hawaii, Puerto Rico, and the U.S. Virgin Islands. The initial data underlying these regional actions indicated that certain Takata frontal air bag inflators in regions prone to long-term high absolute humidity and temperatures pose a safety risk.

On June 11, 2014, NHTSA opened a preliminary evaluation, PE14-016, to investigate the six identified rupture incidents involving driver side and passenger side frontal air bag inflators manufactured by Takata. (PE14-016 was later upgraded to an engineering analysis, EA15-001, on February 24, 2015.)

During the period of October through December 2014, service campaigns related to the passenger side frontal air bags were converted to recalls and the geographic scope was expanded, though still limited to certain regions with higher levels of absolute humidity and high temperatures. Also during this period, NHTSA sent letters to Takata and the Manufacturers (except M-B Sprinter, whose air bag inflators were not then identified as having any defect) regarding their efforts and abilities, individually, to accelerate the supply of replacement air bags and emphasizing the importance of their continued efforts to promptly and effectively remedy the serious safety risk posed to consumers by the defective Takata air bag inflators. Further, as part of its ongoing investigation and oversight of the defective Takata frontal air bag inflators, NHTSA issued a pair of Special Orders to Takata on October 30, and November 18, 2014, a Special Order to Honda on November 5, 2014, and General Orders to BMW, Chrysler, Ford, GM, Honda, Mazda, Mitsubishi, Nissan, Subaru, and Toyota on November 18, 2014.

Also on November 18, 2014, NHTSA publicly demanded that the five auto manufacturers with affected driver side frontal air bag inflators expand their regional campaigns and conduct a nationwide recall of vehicles equipped with the subject driver side frontal air bag inflators. This decision was based on, among other things, the agency's evaluation of a recent driver side frontal air bag failure in a vehicle outside the current regional recall area, and its relationship to five previous driver side frontal air bag inflator ruptures. Beginning in December

2014, BMW, Chrysler, Ford, Honda and Mazda initiated national service campaigns or safety improvement campaigns on vehicles with these driver side frontal air bag inflators.

On November 26, 2014, NHTSA demanded that Takata conduct a national recall of driver side frontal air bag inflators. In a response dated December 2, 2014, Takata declined to do so. Despite Takata's response, NHTSA continued insisting that Takata conduct a national recall.

On May 18, 2015, at NHTSA's urging, Takata filed four Defect Information Reports ("DIR's") pursuant to 49 CFR 573.6. In those DIR's, Takata determined that a defect exists in certain models of frontal air bag inflators (specifically, the PSDI, PSDI-4, PSDI-4K, SPI, PSPI and PSPI-L).

As of May 27, 2015, ruptured Takata air bag inflators allegedly resulting in death or injury have been confirmed in 95 incidents in the United States. Many of these incidents resulted in serious injury to vehicle occupants. In five of the incidents, the vehicle's driver died, allegedly as a result of injuries sustained from the rupture of the air bag inflator. In other incidents, vehicle occupants allegedly suffered injuries including cuts or lacerations to the face or neck, broken or fractured facial bones, loss of eyesight, broken teeth, and traumatic brain injury.

### **III. Coordinated Remedy Program Proceeding**

The Safety Act requires manufacturers to remedy safety-related defects in motor vehicles. 49 U.S.C. 30120(a). The remedy must be adequate to protect the American public from the safety risk posed by the defect. 49 U.S.C. 30120(c). Manufacturers are required to notify both the Secretary and vehicle owners of safety related defects, 49 U.S.C. 30118, including procedures for owners to follow to have the safety-related defect remedied, 49 U.S.C. 30119. The Safety Act also authorizes the Secretary to conduct investigations to enforce the Safety Act, 49 U.S.C. 30166(b)(1), issue general and special orders (responses to which are compulsory),

hold hearings, and take testimony, 49 U.S.C. 30166(g)(1). If the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to "accelerate" the remedy program if the Secretary finds that there is a risk of serious injury or death if the remedy program is not accelerated, and that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both. 49 U.S.C. 30120(c)(3). The Secretary has delegated his authorities under the Safety Act, including each of the above, to the NHTSA Administrator, 49 CFR 1.95(a) and 501.2(a)(1). Accordingly, NHTSA is opening this coordinated remedy proceeding to investigate issues related to the remedy of defective Takata frontal air bag inflators and to coordinate remedy programs, if and as appropriate based upon the findings of the proceeding.

As an initial matter, NHTSA seeks a full, open, and collaborative process, without compromising NHTSA's objectives of safety, that facilitates thoughtful problem-solving and engages all regulated entities in developing and implementing solutions to this significant safety risk. For example, NHTSA anticipates that it will collaborate with the Manufacturers, gathering information and data from each Manufacturer regarding, among other things, information related to production of replacement frontal air bag inflators and their distribution. Upon receipt, public versions of all responses to NHTSA's requests will be posted to this docket.

NHTSA also anticipates engaging the Suppliers in a cooperative, collaborative process seeking, among other things, information related to current production capabilities, possible enhanced production capabilities in the future, and any challenges to quickly increasing production of these specific parts. This process will involve requesting specific information from Suppliers and engaging in candid, thoughtful dialogue with Suppliers.



NHTSA further anticipates significant industry outreach to facilitate the forging of collaborative partnerships. Among other approaches, NHTSA anticipates convening one or more meetings, individually and/or in groups, with Takata, Manufacturers, Suppliers, and/or others to candidly discuss the challenges these industries are facing and, again, work collaboratively to create solutions that further mitigate and control the risk of harm presented by defective Takata air bag inflators and the challenges to achieving a satisfactory recall/remedy completion rate. Further, NHTSA may decide to hold a public hearing and, if so, NHTSA will provide information on the scope, date, time, and location of, and how to participate in, such a hearing in a subsequent **Federal Register** Notice.

#### **IV. NHTSA's Request for Public Comments**

While NHTSA will request certain information from Takata, Manufacturers, Suppliers, and other regulated entities in this proceeding, NHTSA also seeks comments from the public. NHTSA requests comments regarding, among other things, how NHTSA can most effectively exercise its authority with respect to prioritizing, organizing, and phasing recall and remedy programs involving the defective Takata frontal air bag inflators as described above, and methods for ensuring that Manufacturers and Takata achieve satisfactory recall/remedy completion rates.

NHTSA also requests comments on how Takata, Manufacturers, Suppliers, and other regulated entities would comply with one or more administrative orders that NHTSA may issue at the conclusion of this proceeding, upon consideration of the relevant data, facts found, and choices made. NHTSA is further requesting comments on the possible terms of any such order(s). In particular, NHTSA requests comments relating to (1) whether, and how, NHTSA should order Takata and/or other regulated entities to source replacement parts for

Manufacturers, (2) whether, and how, NHTSA should issue an accelerated remedy directive to Takata and/or some (or all) Manufacturers, (3) whether, and how, NHTSA should order Takata and/or Manufacturers to prioritize certain vehicles or certain regions in its allocation of replacement parts, (4) whether, and how, NHTSA should order a replacement schedule for replacement frontal inflators/air bags if Takata and/or Manufacturers cannot provide assurances for the ongoing safety of the inflators, and (5) whether, and how, NHTSA should order additional authorized repair facilities, or any other regulated entity, to aid Takata and/or Manufacturers in timely completing remedy programs.

**Authority:** 49 U.S.C. 30101, *et seq.*, 30118-30120, 30120(c)(3), 30166(b)(1), 30166(g)(1); 49 CFR 573.6, 573.14; delegations of authority at 49 C.F.R. 1.95(a), 501.2(a)(1).

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Mark R. Rosekind, Ph.D.  
Administrator

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